IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Crl.MC.No. 3631 of 2007()

CC.1069/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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PETITIONER: 2ND ACCUSED:

BABY, AGED 35 YEARS, S/O.VARGHESE,
AMBAZHAKKADAN HOUSE, MUPLIYAM, THRISSUR DISTRICT.

BY ADV. SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PUDUKKAD POLICE STATION, PUDUKKAD.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3631 of 2007

Dated this the 5th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 324 r/w 149 I.P.C. Altogether there were 6 accused persons. The petitioner was not available for trial. Trial against the available co-accused proceeded. They have been found not guilty and acquitted. The case against the petitioner has been split up. Reckoning the petitioner as an absconding accused, coercive processes have been issued against the petitioner. The petitioner finds such processes chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is now willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner then submits that there may be a direction to the learned Magistrate to consider the plea of discharge to be raised by the petitioner after

his appearance under Section 239 Cr.P.C. Needless to say that the learned Magistrate must consider such plea and while considering such plea, it will certainly be open to the petitioner to urge that the co-accused having already been acquitted, the allegations of unlawful assembly and allied offences cannot now survive against the petitioner. Such plea will have to be considered on merits and appropriate orders must be passed.

(R.BASANT, JUDGE)

rtr/-